

**United States District Court  
For The Western District Of Washington  
At Seattle**

Fruci & Associates, PS, for itself and on behalf of a class of similarly situated businesses and individuals,

*Plaintiff,*

V.<sub>1</sub>

A10 Capital LLC, First Interstate Bank,  
KeyBank N.A., Mountain West Bank,  
Numerica Credit Union, Sound Community  
Bank, State Bank Northwest, U.S. Bank, NA,  
Washington Trust Bank, Wells Fargo Bank,  
N.A., Wheatland Bank, Inc.,

### *Defendants.*

No. 2:20-cv-864-RSM-MAT

## Amended Class Action Complaint

## Jury Trial Demanded

Plaintiff Fruci & Associates, PS brings this class action on behalf of itself and those similarly situated (hereinafter “Plaintiff”) against Defendants A10 Capital LLC, First Interstate Bank, Keybank N.A., Mountain West Bank, Numerica Credit Union, Sound Community Bank, State Bank Northwest, U.S. Bank, NA, Washington Trust Bank, Wells Fargo Bank, N.A., and Wheatland Bank, Inc. (collectively, “Defendants” or the “Lenders”), for agent fees due to it from Defendants as a participant in the Federal Paycheck Protection Program. For its class action complaint (“Complaint”), Plaintiff alleges as follows based upon its knowledge, and upon information and belief including investigation conducted by its attorneys:

1                   **I.         Parties**

2   1. Plaintiff Fruci & Associates, PS (“Frucci”), is a professional service corporation and CPA firm,  
3   organized and authorized to do business, and doing business, in the State of Washington since  
4   1938, with its office located in Spokane, Washington.

5   2. Kemper Rojas (“Kemper”) is the Managing Partner and a Governor of Frucci. Kemper is a CPA  
6   in good standing since 2010. The mission of Frucci is to maximize the financial welfare of the  
7   individuals and businesses they serve.

8   3. On information and belief, Defendant A10 Capital LLC (“A10”), is an Idaho corporation and  
9   Foreign Limited Liability Company. Upon information and belief, A10 conducts substantial  
10   business in this District.

11   4. On information and belief, Defendant First Interstate Bank (“FIB”) is a Montana corporation  
12   and a state-chartered bank. Upon information and belief, FIB is a foreign profit corporation in  
13   Washington which conducts substantial business in this District.

14   5. On information and belief, Defendant KeyBank N.A. (“Key”) is the primary subsidiary of  
15   KeyCorp, an Ohio corporation headquartered in Cleveland, Ohio. Key conducts substantial  
16   business within this district.

17   6. On information and belief, Defendant Mountain West Bank (“MWB”) is a subsidiary of  
18   Glacier Bancorp, which is a Montana corporation and a federally-chartered bank. Upon  
19   information and belief, MWB conducts substantial business in this District.

20   7. On information and belief, Defendant Numerica Credit Union (“NumericaCU”) is a  
21   Washington nonprofit Corporation. Upon information and belief, NumericaCU conducts  
22   substantial business in this District.

23   8. On information and belief, Defendant Sound Community Bank (“SoundCB”), a wholly-owned  
24   subsidiary of Sound Financial Bancorp, Inc. is a Maryland corporation and a Washington state-  
25   chartered commercial bank. Upon information and belief, SoundCB conducts substantial  
26   business in this District.

1 9. On information and belief, Defendant State Bank Northwest (“State Bank”) is a Washington  
2 corporation and a state-chartered bank. Upon information and belief, State Bank conducts  
3 substantial business in this District.

4 10. On information and belief, Defendant U.S. Bank, NA (“US Bank”) is a subsidiary of US  
5 Bancorp, a Delaware corporation. US Bank is a federally-chartered bank. Upon information  
6 and belief, US Bank conducts substantial business in this District.

7 11. On information and belief, Defendant Washington Trust Bank (“WTB”) is a Washington  
8 corporation and a Washington-chartered bank. Upon information and belief, WTB conducts  
9 substantial business in this District.

10 12. On information and belief, Defendant Wells Fargo Bank, N.A. (“Wells”) is a subsidiary of  
11 Wells Fargo & Co., a Delaware corporation. Wells is a federally-chartered bank. Upon  
12 information and belief, Wells conducts substantial business in this District.

13 13. On information and belief, Defendant Wheatland Bank, Inc. (“Wheatland”) is a Washington  
14 corporation and federally-chartered bank. Upon information and belief, Wheatland conducts  
15 substantial business in this District.

16 14. In this Complaint, when reference is made to any act of any Defendant, such shall be deemed  
17 to mean that the officers, directors, agents, employees, or representatives of the Defendant  
18 named in this lawsuit committed or authorized such acts, or failed and omitted to adequately  
19 supervise or properly control or direct their employees while engaged in the management,  
20 direction, operation or control of the affairs of the Defendant and did so while acting within  
21 the scope of their employment or agency.

22                   **II.        Jurisdiction And Venue**

23 15. This Court has original jurisdiction over this action under the Class Action Fairness Act, 28  
24 U.S.C. § 1332(d) because this is a proposed nationwide class action in which: (1) at least some  
25 members of the proposed Class have different citizenship from Defendant(s); (2) the proposed  
26 Class consists of more than 100 persons or entities; and (3) the claims of the proposed members  
27 of the Class exceed \$5,000,000 in the aggregate.

1 16. This Court has personal jurisdiction over Defendants because Defendants are residents of  
2 Washington and this judicial District, do business in this District, and/or a substantial number  
3 of the events giving rise to the claims alleged herein took place in Washington and this District.  
4 17. The venue is proper in this District pursuant to 28 U.S.C. § 1331(b)(2) because a substantial  
5 part of the events or omissions giving rise to the alleged claims occurred in this District given  
6 that Plaintiff applied on behalf of its clients for PPP loans while in this District, and Defendants  
7 marketed, promoted, and took applications for PPP loans in this District.

8 **III. Factual Allegations**

9 18. On January 21, 2020, the Center for Disease Control and Prevention (“CDC”) confirmed the  
10 first U.S. case of a new coronavirus known as COVID-19.  
11 19. On January 30, 2020, the World Health Organization (“WHO”) declared the COVID-19  
12 outbreak to be a “public health emergency of international concern.”  
13 20. On March 11, 2020, the WHO declared that the spread of COVID-19 had become a pandemic.  
14 21. On March 13, 2020, President Trump issued the Coronavirus Disease 2019 (COVID-19)  
15 Emergency Declaration applicable to the United States that declared that the pandemic was of  
16 “sufficient severity and magnitude to warrant an emergency declaration for all states, territories  
17 and the District of Columbia.”  
18 22. The Trump Administration expressly recognized that with the COVID-19 emergency, “many  
19 small businesses nationwide are experiencing economic hardship as a direct result of the  
20 Federal, State, and local public health measures that are being taken to minimize the public’s  
21 exposure to the virus.” *See Small Business Administration - Business Loan Program*  
22 *Temporary Changes; Paycheck Protection Program, 13 CFR Part 120, Interim Final Rule* (the  
23 “SBA PPP Interim Final Rule”).  
24 23. On March 25, 2020, in response to the economic damage perpetrated by the COVID-19 crisis,  
25 the United States Senate passed the Coronavirus Aid, Relief, and Economic Security Act (the  
26 “CARES Act” or the “Act”). The CARES Act (P.L. 116-136) was passed by the House the  
27 following day and signed into law by President Trump on March 27, 2020.

1 24. The Act included \$377 billion in federally-funded loans to small businesses and a \$500 billion  
2 governmental lending program, administered by the United States Department of Treasury  
3 (“Treasury”) and the Small Business Administration (“SBA”), a United States government  
4 agency that provides support to entrepreneurs and small businesses nationwide.

5 25. As part of the CARES Act, the Federal Government created the \$349 billion loan program,  
6 referred to as the “Paycheck Protection Program” (“PPP”), providing loans to small businesses  
7 originated from February 15, 2020, through June 30, 2020. The PPP was created to provide  
8 American small businesses with eight weeks of cash-flow assistance, with a certain percentage  
9 forgivable if utilized to retain employees and fund payrolls. The loans are backed by the SBA,  
10 administered by Treasury, and funded through private lenders, including banks and financial  
11 services firms (“Lenders”). Pursuant to the SBA PPP Interim Final Rule, the PPP is a limited  
12 funding program, as funds are provided on a “first-come, first-served basis.” See 13 CFR Part  
13 120, p. 13.

14 26. Treasury announced on April 3, 2020, that small businesses and sole proprietors could apply  
15 and receive loans to cover their payroll and other expenses through approved SBA Lenders.  
16 Beginning on April 10, 2020, independent contractors and self-employed individuals could  
17 apply as well<sup>1</sup>.

18 27. On April 24, 2020, President Trump signed the Paycheck Protection Program and Health Care  
19 Enhancement Act (“PPPEA”). The PPPEA added \$310 billion in PPP funding, bringing the  
20 total PPP funds available to lend to \$659 billion.

21 28. Treasury’s PPP Information Sheet (Lenders) (the “PPP ISL”), consistent with the SBA PPP  
22 Interim Final Rule (collectively, the “SBA Regulations”), creates a system with three (3)  
23 participants:  
24 a. A Lender who funds the PPP loans backed by the Federal Government;

25  
26  
27

---

<sup>1</sup> <https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf>

- b. A small or medium-sized “main street” borrower who obtains the PPP loan for the specified purpose (the “Borrower”); and
- c. An independent agent (the “Agent”), often a local accountant, business consultant, attorney, employee of the applicant, or payroll service, who brings the Borrower to Lenders and helps shepherd the Borrower through the PPP loan process.

29. It is through the Agent that the PPP ensures the proper and efficient allocation of a limited pool of dollars under its “first come, first serve” approach. Under the SBA Regulations, **both** the Lenders **and** Agents are paid mandatory fees under the PPP for their respective work.

30. The SBA Regulations define Agent as an “authorized representative,” which broadly includes:

- a. “An attorney;
- b. An accountant;
- c. A consultant;
- d. Someone who prepares an applicant’s application for financial assistance and is employed and compensated by the applicant;
- e. Someone who assists a lender with originating, disbursing, servicing, liquidating, or litigating SBA loans;
- f. A loan broker; or
- g. Any other individual or entity representing an applicant by conducting business with the SBA ”<sup>2</sup>

31. Without the critical and necessary work performed by Plaintiff and the Class Members as Agents under the PPP, the CARES Act would not accomplish the United States Senate's expressed legislative intent: The Senate requested Treasury to "issue guidance to lenders and agents to ensure that the ... loans prioritizes small business concerns and entities in

<sup>2</sup> <https://home.treasury.gov/system/files/136/PPP%20Lender%20Information%20Fact%20Sheet.pdf>

underserved and rural markets, including veterans and members of the military community, small business concerns owned and controlled by socially and economically disadvantaged individuals..., women, and businesses in operation for less than 2 years.”<sup>3</sup> [Emphasis added].

32. The SBA Regulations also expressly provide how each of the PPP participants (Borrower, Lender, and Agent) will benefit from (and be compensated under) the PPP. For example, the PPP Borrower receives 100 percent of the loan without any deductions for fees or costs.

33. For the Lenders, the SBA Regulations provide that they will be compensated based on the balance of the financing at the time of final disbursement. Specifically, the SBA will pay Lenders fees in the following amounts for processing PPP loans:

- a. Five percent (5%) for loans of not more than \$350,000;
- b. Three percent (3%) for loans of more than \$350,000 and less than \$2,000,000;
- and
- c. One percent (1%) for loans of at least \$2,000,000<sup>4</sup>.

34. For the Agents, the SBA Regulations provide that “Agent fees will be paid out of lender fees. The lender will pay the agent. Agents may not collect any fees from the applicant. The total amount that an agent may collect from the lender for assistance in preparing an application for a PPP loan (including referral to the lender) may not exceed:

- a. One (1) percent for loans of not more than \$350,000;
- b. 0.50 percent for loans of more than \$350,000 and less than \$2 million; and
- c. 0.25 percent for loans of at least \$2 million” (the “Agent Fees”). (Emphasis Added).<sup>5</sup>

---

<sup>3</sup> H.R. 748, CARES ACT, PL 116-136 (March 27, 2020; 134 Stat. 281)

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

1 35. The SBA Regulations also reflect that the Secretary of the Treasury, “determined that the agent  
 2 fee limits set forth above are reasonable based upon the application requirements and the fees  
 3 that lenders receive for making PPP loans.

4 36. Based on information and belief, Defendants funded PPP loans for Borrowers represented by  
 5 Plaintiff and the proposed Class, received their Lender Fees from the Federal Government, and  
 6 failed to pay the Agent Fees earned by the Plaintiff and proposed Class out of the Lender Fees  
 7 received.

8 37. Defendants have either failed and refused to pay, or are willing to pay only a partial percentage  
 9 of, the monies owed in Agent Fees to Plaintiff and the proposed Class, thus retaining for  
 10 themselves all of the statutory fees allotted by the Government for Agents as part of the PPP,  
 11 despite the work performed by the Agents in assisting the Borrowers in securing their PPP  
 12 loans.

13 **Plaintiff, in its Role as Agent, Assists its Clients With Applying for PPP Loans Under the**  
 14 **CARES ACT**

15 38. On or about March 27, 2020, Plaintiff became aware that the CARES Act had been signed into  
 16 law. Plaintiff, knowing that the COVID-19 crisis would severely impact its clients’ businesses,  
 17 assisted its clients with obtaining PPP loans through a specific Defendant.

18 39. Plaintiff spent considerable time familiarizing itself with the Act, and the related SBA  
 19 Regulations, and, in particular, (a) Section 1102, which permits the SBA to guarantee 100%  
 20 of Section 7(a) loans under the PPP, and (b) Section 1106 of the Act which provides  
 21 forgiveness of up to the full principal amount of qualifying loans guaranteed under the PPP.

22 40. In or about April 2020, Plaintiff, in its role as Agent, assisted its clients as Borrowers under  
 23 the PPP in the gathering and analysis of their documents, as well as the calculation and  
 24 preparation of each loan application (the “Application(s)”), and in identifying Lenders who  
 25 were processing PPP loans in the “race to the bank” environment that ensued as a result of the  
 26 first-come, first-serve nature of the PPP.

27

1 41. Based on the SBA Regulations, Plaintiff understood that the only compensation it would  
2 receive was from the mandated Agent Fees that were advanced to the Lenders by the Federal  
3 Government for the Plaintiff's and Class Members' benefit as part of the statutory Lender Fees.

4 42. To prepare the documentation, Plaintiff assisted clients in gathering the required information  
5 and preparing the Applications, including the following, where applicable or necessary:

- 6 a. Loan Calculator Spreadsheet;
- 7 b. SBA Form 2483;
- 8 c. Addendum A: Affiliates;
- 9 d. Information on whether the applicant received an SBA Economic Injury  
10 Disaster Loan ("EIDL");
- 11 e. Certificate of Beneficial Ownership Interest;
- 12 f. Driver's Licenses;
- 13 g. Articles of Incorporation or Articles of Organization;
- 14 h. 2019 IRS/State Payroll Forms;
- 15 i. 2019 Payroll Summary Report by each Employee;
- 16 j. 2019 Health Insurance Premium Paid, including each monthly statement or  
17 year-end summary;
- 18 k. 2019 Retirement Matching Plan Paid, including each monthly statement or  
19 year-end summary;
- 20 l. 2020 1st QTR 941 Form;
- 21 m. January 2020 Payroll Summary by Employee;
- 22 n. February 2020 Payroll Summary by Employee;
- 23 o. March 2020 Payroll Summary by Employee;
- 24 p. Health Insurance Premium Paid – January, February, and March 2020;

- q. Retirement Matching Plan Paid – January, February, and March 2020;
- r. Wiring Instruction; and
- s. Copy of the Borrower’s most recent bank statement,  
(collectively, (a) – (s) above are part of the Application).

43. In addition, Plaintiff worked to identify Lenders who were taking Applications and funding PPP loans to connect the Borrowers to the limited federal funds available under the PPP.

44. In good faith, Plaintiff believed it would receive its earned Agent Fees from the Lenders after the funding of each of its clients' PPP loans as required by the SBA Regulations.

45. Defendants did not comply with the SBA Regulations in distributing the Agent Fees from their Lender Fees paid to them by the Federal Government under the PPP.

46. Specifically, Defendants as Lenders under the PPP, and without any legal authority under the SBA Regulations or otherwise, refused to pay Agents the required statutory Agent Fees from the fees they obtained from the Government despite demand, or the Defendants repudiated the Agent's role and refused to pay the required Agent Fees as a general policy.

47. As a result of Defendants' unlawful actions, Plaintiff and the proposed Class has suffered financial harm by being deprived of the statutorily mandated compensation for the professional services that it provided in connection with assisting its clients in applying for and obtaining PPP loans, and by being denied by Defendants just compensation for playing the vital role of Agent in the PPP process on behalf of the intended beneficiaries of the program, the small business owner.

## **Class Action Allegations**

48. As noted above, Plaintiff brings this action on behalf of itself and all others similarly situated as a state and nationwide Class, defined below.

49. Plaintiff, in accordance with Fed. R. Civ. P. 23(b)(1), (b)(2), (b)(3) and (b)(4), seeks to represent a Class composed of and defined as follows:

1           a. All Agents as that term is defined by the SBA Regulations that facilitated  
2           businesses in receiving a loan under the PPP, i.e., met the criteria for eligibility  
3           and were not otherwise ineligible, between February 15, 2020, and June 30,  
4           2020, who timely applied for a PPP loan through various Lenders and were  
5           processed and approved for funding (the “Class”).  
6  
7           b. An “Agent” as defined by the SBA Regulations is as follows:  
8               i. an attorney,  
9               ii. an accountant,  
10              iii. a consultant,  
11              iv. someone who prepared an applicant’s application for financial  
12              assistance and is employed and compensated by applicant,  
13              v. someone who assists a lender with originating, disbursing, servicing  
14              liquidating, or litigating SBA loans,  
15              vi. a loan broker, or  
16              vii. any other individual or entity representing an applicant by conducting  
17              business with the SBA.

18       50. Plaintiff reserves the right to expand, limit, modify or amend this Class definition, including  
19           the addition of one or more subclasses, in connection with Plaintiff’s motion for class  
20           certification, or any other time, based upon, *inter alia*, changing circumstances and/or new  
21           facts obtained during discovery.

22       51. *Numerosity*: The Class is composed of thousands of Agents (the “Class Members”) whose  
23           joinder in this action would be impracticable. *See* Fed. R. Civ. P. 23(a)(1). The disposition of  
24           their claims through this class action will benefit all Class Members, the parties, and the courts.

25       52. *Commonality*: There is a commonality in questions of law and fact affecting the Class. *See*  
26           Fed. R. Civ. P. 23(a)(2). These questions of law and fact include, but are not limited to, the  
27           following:

- 1 a. Did Defendants comply with all applicable SBA Regulations in processing  
2 Applications for PPP funds and in distributing PPP funds?
- 3 b. Did Defendants comply with their legal obligations under the terms of the  
4 CARES Act as a lender of the PPP funds?
- 5 c. Did Defendants have a policy and/or practice of failing to compensate Agents  
6 and pay them the required Agent Fees for their work in facilitating PPP loans  
7 to the detriment of the Class?
- 8 d. Did Defendants prioritize their origination fees over abiding by the CARES Act  
9 and PPP specifications?
- 10 e. Did Defendants' conduct constitute intentional tortious interference with  
11 economic relations?
- 12 f. Did Defendants' conduct constitute a conversion of the Agent Fees owed to the  
13 Plaintiff and the proposed Class?
- 14 g. Did Defendants possess exclusive knowledge of material facts, with respect to  
15 the Application process, i.e., that the Agents would not receive the required  
16 Agent Fees compensation when assisting applicants with PPP loan process?
- 17 h. Did Defendants actively conceal a material fact or facts from the Plaintiff, i.e.,  
18 that the Agent was not going to receive its earned Agent Fees when assisting  
19 with the Applications?
- 20 i. Whether Defendants' conduct, as alleged herein, was intentional and knowing?
- 21 j. Did Defendants frustrate and tortuously interfere with Plaintiff and the Class  
22 Members reasonable expectations of receiving the Agent Fees when assisting  
23 the Borrowers for PPP loans that were funded;
- 24 k. Whether Class Members are entitled to damages and/or restitution, and if so,  
25 what is the amount of revenues and/or profits Defendants received and/or was  
26 lost by Class Members as a result of the conduct alleged herein?
- 27 l. Whether Defendants are likely to continue to mislead the public and Class

1 Members and continue to violate SBA Regulations regarding paying Agent  
2 their earned fees under the CARES Act; and

3 m. Whether Plaintiff and Class Members are entitled to an award of reasonable  
4 attorneys' fees, pre-judgment interest, and costs of suit.

5 53. *Superiority*: In engaging in the conduct described herein, Defendants have acted and/or failed  
6 to act on grounds generally applicable to Plaintiff and other Class Members. Such behavior  
7 requires the Court's imposition of uniform relief to ensure compatible standards of conduct  
8 toward Class Members. A class action is superior to all other available means for the fair and  
9 efficient adjudication of Plaintiff's and the Class Members' claims. Few, if any, Class  
10 Members could afford to seek legal redress of the wrongs complained of herein on an  
11 individual basis. Absent a class action, Class Members and the general public would not likely  
12 recover, or have the chance to recover, damages or restitution, and Defendants would be  
13 permitted to retain the fruits of their misdeeds. Any difficulties that might occur in the  
14 management of this proposed class action are insubstantial. See Fed. R. Civ. P. 23(b)(1)(A).

15 54. *Typicality*: Plaintiff's claims are typical of, and are not antagonistic to, the claims of all Class  
16 Members. See Fed. R. Civ. P. 23(a)(3). Plaintiff and the Class Members have all been  
17 deceived by Defendants' unfair and unlawful PPP loan application and funding practices, as  
18 alleged herein. The factual and legal basis of Defendants' liability to Plaintiff and each Class  
19 Member as a result of Defendants' actions are described herein. Defendants' purported  
20 defenses to the claims, both legal and factual, are typical of the defenses they would try to raise  
21 to the Class claims.

22 55. *Adequacy*: Plaintiff is an adequate representative of the Class because it is a member of the  
23 Class, and Plaintiff's interests do not conflict with the interest of the other Class Members that  
24 Plaintiff seeks to represent. *See* Fed. R. Civ. P. 23(a)(4). Plaintiff will fairly and adequately  
25 represent and protect the interest of the other Class Members. Plaintiff has retained counsel  
26 with substantial experience in litigating complex cases, including consumer fraud and class  
27 actions. Both Plaintiff and its counsel will vigorously prosecute this action on behalf of the

1 Class and have the financial ability to do so. Neither Plaintiff nor counsel has any interest  
2 adverse to other Class Members.

3 **56. Ascertainability:** Plaintiff is informed and believes that Defendants keep extensive electronic  
4 records of their loan Applications through, *inter alia*, computerized loan application systems,  
5 and Federally mandated record-keeping practices. Defendants have one or more databases  
6 through which all of the borrowers may be identified and ascertained, and it maintains contact  
7 information, including email and mailing addresses. From this information, the existence of  
8 the Class Members (i.e., the Agent for the Borrower) can be determined, and thereafter, a notice  
9 of this action can be disseminated in accordance with due process requirements.

10 **57. Predominance:** The above questions of law and fact predominate over individual questions  
11 affecting the Class Members. Defendants' conduct described in this Complaint all stems from  
12 ignoring their obligations under the SBA Regulations setting forth the policy and procedures  
13 for payment of Agent Fees that are readily calculable from Defendants' records and other  
14 Class-wide evidence. Class Members do not have an interest in pursuing separate individual  
15 actions against Defendants as the amount of each Class Member's claim is relatively small  
16 compared to the expense and burden of individual prosecution. The management of this action  
17 as a class action will not present any likely difficulties. In the interests of justice and judicial  
18 efficiency, it would be desirable to concentrate the litigation of all Class Members' claims in  
19 a single action. *See Fed. R. Civ. P. 23(b)(3).*

20 58. Neither the Plaintiff nor the Class has previously litigated the claims asserted in this Complaint.

21 **Count I (Declaratory Relief)**

22 59. Plaintiff incorporates by reference the foregoing allegations as if the same were fully alleged  
23 herein.

24 60. Plaintiff asserts this cause of action on behalf of itself and other Class Members as Agents  
25 defined by the SBA as follows: (i) an attorney; (ii) an accountant; (iii) a consultant; (iv)  
26 someone who prepared an applicant's application for financial assistance and is employed and  
27 compensated by applicant; (v) someone who assists a lender with originating, disbursing,

1 servicing liquidating, or litigating SBA loans; (vi) a loan broker; or (vii) any other individual  
2 or entity representing an applicant by conducting business with the SBA.

3 61. Plaintiff, as an Agent under the PPP, assisted its clients with submitting the Applications to  
4 obtain PPP loans under the CARES Act. Defendants failed to pay Agent Fees owed to Plaintiff  
5 as required by SBA Regulations. Instead, Defendants kept all of the origination and processing  
6 fees for themselves, in direct violation of the SBA Regulations.

7 62. An actual justiciable controversy has arisen between Plaintiff and Defendants as to the Agent  
8 Fees owed to Plaintiff by Defendants, and, upon information and belief, Defendants either deny  
9 that any Agent Fees are owed to Plaintiff or claim that only a percentage of the Agent Fees are  
10 owed.

11 63. Plaintiff and the Class Members have a legally protectable interest under the SBA Regulations  
12 in that they are entitled to their mandated Agent Fees in connection with the professional  
13 services rendered to their clients in preparing and submitting Applications for PPP funds.

14 64. Defendants have failed and refused, and continue to fail and refuse, to pay the mandated Agent  
15 Fees to the Agents as required under the SBA Regulations.

16 65. Plaintiff and the Class Members seek a declaration in accordance with SBA Regulations that  
17 Defendants are required under the SBA Regulations to pay the Agent Fees at the statutory  
18 amount on each loan funded involving an Agent.

19 **Count II**

20 **(TORTIOUS INTERFERENCE WITH ECONOMIC RELATIONS)**

21 66. Plaintiff incorporates by reference the foregoing allegations as if the same were fully alleged  
22 herein.

23 67. Plaintiff asserts this cause of action on behalf of itself and the other Class Members as Agents.

24 68. Defendants have intentionally and tortuously interfered with Plaintiff's and the Class  
25 Members' economic relations by circumventing and ignoring their obligations to comply with  
26 the Agent Fee payment requirements under the SBA Regulations and improperly retaining  
27 monies owed to Agent.

1 69. Upon information and belief, Defendants improperly allege that Plaintiff and the Class  
2 Members are not entitled to the Agent Fees, or are only entitled to a portion of the Agent Fees,  
3 despite the clear and unambiguous terms in the SBA Regulations.

4 70. Defendants knowingly and intentionally engaged in lending to businesses under the PPP and  
5 thus were required to abide by the obligations unambiguously set forth in the SBA Regulations  
6 to pay Plaintiff the mandated Agent Fees.

7 71. Plaintiff, as well as all Class Members, engaged in helping clients apply for PPP loans with the  
8 reasonable expectation, consistent with the SBA Regulations, that while they were not  
9 permitted to charge their clients fees in assisting with the Applications, they would receive as  
10 compensation the mandated Agent Fees from the Lenders once a loan to a Borrower  
11 represented by an Agent was funded.

12 72. Plaintiff and the Class Members also chose specific Defendants to place the Borrowers with  
13 the expectation of being paid the Agent Fees as a PPP Agent under the SBA Regulations.

14 73. Defendants are well aware or should have been aware of the mandated Agent Fees under the  
15 SBA Regulations. Nevertheless, Defendants have improperly chosen to retain the Agent Fees  
16 owed to Plaintiff and the Class.

17 74. Defendants' acts constitute intentional and tortious interference with Plaintiff's and the Class  
18 Members' economic relations because Defendants improperly and wrongfully withheld  
19 monies owed to Plaintiff that were provided for pursuant to the SBA Regulations and that  
20 Plaintiff earned.

21 75. Defendants' improper acts or practices of refusing to pay Plaintiff and the proposed Class the  
22 mandated Agent Fees, and their failure to adhere to the SBA Regulations as to the PPP loans,  
23 are the proximate cause of the damages sustained by Plaintiff and the Class Members.

24 76. Defendants have used improper means to obtain money from the Federal Government at the  
25 expense of Plaintiff and the Class by:  
26           a. failing to adhere to the SBA Regulations;

1                   b. wrongfully informing the Agents such as Plaintiff and the Class Members that  
2                   they would not receive any compensation for the work they performed, and/or  
3                   c. letting the Agent bring the Borrower to the Defendants for a PPP loan, but then  
4                   telling the Agent after the fact that they would not be paid, or paid less than the  
5                   mandated Agent Fee.

6     77. As a result, Defendants have engaged in intentional and tortious interference with Plaintiff's  
7                   and the Class Members' economic relations.

8     78. Defendants' conduct manifests a knowing and reckless indifference towards, and a disregard  
9                   of, the rights of Plaintiff and the Class Members.

10    79. Plaintiff, the Class, and members of the public will be harmed and/or denied an effective and  
11                   complete remedy if the relief requested herein is not granted.

12    80. Plaintiff and the Class Members request this Court to cause Defendants to disgorge the amount  
13                   of the Agent Fees wrongfully misappropriated by Defendants to Plaintiff and all Class  
14                   Members, enjoin Defendants from continuing the improper acts as discussed herein, and award  
15                   Plaintiff and all Class Members compensatory damages, and such other damages and relief  
16                   this Court deems just and proper.

17                   **COUNT III**

18                   **(UNJUST ENRICHMENT)**

19    81. Plaintiff incorporates by reference the foregoing allegations as if the same were fully alleged  
20                   herein.

21    82. Plaintiff asserts this cause of action on behalf of itself and other Class Members as Agents.

22    83. Defendants have been, and continue to be, unjustly enriched, to the detriment and at the  
23                   expense of Plaintiff and the Class Members as a result of Defendants' wrongful withholding  
24                   of Agent Fees from the Lender Fees they received, and are now owed to Plaintiff and the Class.

25    84. Defendants have been unjustly benefitted through the unlawful and wrongful retention of  
26                   monies due to the Agents (i.e., the Agent Fees) as a result of the funding of the PPP loans, and  
27                   Defendants receipt of their Lender Fees under the same program. Specifically, Defendants

1 retained for their benefit Agent Fees that Plaintiff and the Class were entitled to be paid for  
2 work performed, and continue to benefit to the detriment and at the expense of Plaintiff and  
3 the Class Members.

4 85. Plaintiff and the Class Members chose specific Defendants to place the Borrowers and the PPP  
5 Loans, with the reasonable expectation of being paid as an Agent under the SBA Regulations.

6 86. Defendants are intentionally retaining the monies allocated by the Federal Government for  
7 Agent Fees and paid to Defendants as part of their Lender Fees, despite knowing that said  
8 monies are owed to Plaintiff and the Class Members.

9 87. Defendants refuse to pay, or are willing to pay only a partial percentage of the monies owed to  
10 Plaintiff and the Class Members, and are choosing to retain the Agent Fees for themselves in  
11 direct violation of SBA regulations.

12 88. It is against equity and good conscience that Defendants be permitted to retain the benefits  
13 conferred upon them by Plaintiff and the Class Members.

14 89. Defendants' conduct manifests a knowing and reckless indifference toward, and a disregard  
15 of, the rights of Plaintiff and the Class Members.

16 90. Accordingly, Defendants should not be allowed to retain the benefits conferred upon them by  
17 the Plaintiff and the Class Members.

18 91. Plaintiff and the Class Members request this Court to cause Defendants to disgorge the amount  
19 of the Agent Fees wrongfully misappropriated by Defendants to Plaintiff and all Class  
20 Members, enjoin Defendants from continuing the improper acts as discussed herein, and award  
21 Plaintiff and all Class Members such other damages and relief that this Court deems just and  
22 proper.

23 **COUNT IV**

24 **(CONVERSION)**

25 92. Plaintiff incorporates by reference the foregoing allegations as if the same were fully alleged  
26 herein.

1 93. Plaintiff and the other Class Members have an immediate right to the mandatory and  
2 identifiable Agent Fees owed to them under the SBA Regulations.

3 94. Under the PPP, the Agent cannot look to the Treasury for direct payment of their Agent Fees.  
4 Instead, the Agent Fees are paid to the Lender as part of the Lender Fees, and the Lender is  
5 obligated to pay the Agent Fees over to the Agent.

6 95. As alleged herein, the Agent Fees were paid to the Lenders as part of the Lender Fees paid to  
7 each Defendant for each Borrower's loan. The Lender Fees were placed in the Defendants'  
8 custody to be used to pay Plaintiff and the other Class Members the Agent Fees they had  
9 earned.

10 96. Defendants are obligated to pay Plaintiff and other Class Members the mandatory Agent Fees  
11 according to the SBA Regulations.

12 97. Defendants willfully interfered with the rights of Plaintiff and the other Class Members,  
13 without legal justification, when they misappropriated and retained the monies paid to  
14 Defendants as part of their Lender Fees, and allocated by Treasury for the Agent Fees due upon  
15 the funding of each of Plaintiff's and the other Class Members' clients' PPP loans.

16 98. Defendants deprived Plaintiff and the other Class Members of the ownership, possession, and  
17 control of the Agent Fees and misappropriated them for their benefit through their unauthorized  
18 dominion over the Agent Fees.

19 99. At the time they unlawfully retained the Agent Fees, Defendants knew or should have known  
20 that the Agent Fees paid to them as part of their Lender Fees were owed to Plaintiff and the  
21 other Class M.

22 100. Defendants' improper acts or practices of refusing to pay Plaintiff and the other Class  
23 Members the mandated Agent Fees are the proximate cause of the damages sustained by the  
24 Plaintiff and the Class Members.

25 101. Defendants' conduct manifests a willful or reckless disregard of Plaintiff's and the Class  
26 Members' right of possession to the monies owed to them.

27

1 102. Defendants' improper acts or practices of refusing to pay Plaintiff and the other Class  
2 Members the mandated Agent Fees are the proximate cause of the damages sustained by the  
3 Plaintiff and the Class Members.

4 103. Plaintiff and the Class Members respectfully request that this Court cause Defendants to  
5 disgorge the amount of the Agent Fees wrongfully misappropriated and converted by  
6 Defendants to Plaintiff and all Class Members, enjoin Defendants from continuing the  
7 improper acts as discussed herein, and award Plaintiff and all Class Members compensatory  
8 and punitive damages, and such other damages and relief that this Court deems just and proper.

9 **COUNT V**

10 **VIOLATION OF RCW 19.96.020**

11 104. Plaintiff incorporates by reference the foregoing allegations as if the same were fully  
12 alleged herein.

13 105. Plaintiff and the other Class Members have an immediate right to the mandatory and  
14 identifiable Agent Fees owed to them under the SBA Regulations.

15 106. As alleged herein, the Agent Fees were paid to the Defendants as part of the Lender Fees  
16 paid to each Lender for each Borrower's loan. The SBA entrusted the Agent Fees in  
17 Defendants' custody under the guidance that such Agent Fees are to be paid to the applicable  
18 Agent, e.g., Plaintiff and Class Members.

19 107. Defendants willfully interfered with the rights of Plaintiff and the other Class Members,  
20 without legal justification, when they misappropriated and retained the monies allocated by  
21 Treasury for the Agent Fees due upon the funding of each of Plaintiff's and the other Class  
22 Members' clients' PPP loans.

23 108. Defendants deprived Plaintiff and the other Class Members of the possession and use of  
24 the Agent Fees and misappropriated them for their benefit.

25 109. At the time they unlawfully retained the Agent Fees, Defendants knew or should have  
26 known that the Agent Fees were owed to Plaintiff and the other Class Members.

1 110. Defendants' improper acts or practices of refusing to pay Plaintiff and the other Class  
2 Members the mandated Agent Fees are the proximate cause of the damages sustained by the  
3 Plaintiff and the Class Members.

4 111. Defendants' conduct manifests a knowing and reckless indifference toward, and a  
5 disregard of, the rights of Plaintiff and the Class Members.

6 112. Defendants' intentional conduct and practice are unfair and/or deceptive acts in the conduct  
7 of commerce.

8 113. Defendants' intentional conduct and practice are injurious to the public interest because it  
9 injured the Plaintiff and the Class Members and continues to injure.

10 114. Plaintiff and the Class Members request this Court to cause Defendants to disgorge the  
11 amount of the Agent Fees wrongfully misappropriated by Defendants to Plaintiff and all Class  
12 Members, enjoin Defendants from continuing the improper acts as discussed herein, and award  
13 Plaintiff and all Class Members compensatory damages, and such other damages and relief  
14 that this Court deems just and proper.

15 **Prayer For Relief**

16 **WHEREFORE**, Plaintiff, individually and on behalf of the Class Members, prays for the  
17 following relief:

- 18 A. An Order certifying the Class as defined above, appointing Plaintiff as the Class  
19 Representative for the Class, and appointing Plaintiff's counsel as Class counsel  
20 for the Class;
- 21 B. An Order declaring Defendants' actions to be unlawful;
- 22 C. An Order declaring that Defendants have been unjustly enriched;
- 23 D. An award of all recoverable compensatory, statutory, and other damages sustained  
24 by Plaintiff and the Class Members, as well as equitable relief including  
25 disgorgement and enjoining Defendants from continuing the improper acts as  
26 identified herein, and all other available relief under applicable law;

1 E. An award of treble damages under RCW 19.86.090 for Defendants' violation of  
2 RCW 19.86.020;

3 F. Reasonable attorneys' fees and expenses as permitted by applicable statutes and  
4 law, including, but not limited to RCW 19.86.090;

5 G. Costs related to bringing this action;

6 H. Pre and post-judgment interest as allowed by law; and

7 I. Such further relief at law or in equity that this Court deems just and proper.

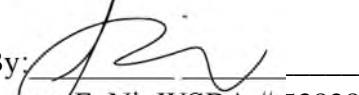
8

9 **JURY TRIAL DEMAND**

10 Plaintiff demands a trial by jury on all claims and issues so triable under Federal Rule of Civil  
11 Procedure 38(a).

12 Dated: June 9, 2020.

13 AFN Law PLLC

14 By:   
15 Angus F. Ni, WSBA # 53828  
16 AFN Law PLLC  
17 506 2nd Ave, Suite 1400  
18 Seattle, WA 98104  
19 646.543.7294